

A DRAMATIC SCENE.

Continued From Second Page.

because the absent witness appeared early in the progress of the case in the court, long before her testimony was required, and remained in attendance as a witness, and testified fully for the defendants, thereby curing any error there might have been in overruling the motion for a continuance.

The petition for a change of venue, being verified, may be considered both as a petition and affidavit in support thereof. It charges, first, that the three papers of the city published shortly after the homicide exparte and prejudicial statements against the defendants, and upon the events and circumstances of the homicide, and that the defendants were guilty of murder; second, that the city and the county of Ohio have been further prejudiced against the defendants by the aforesaid publications; third, that this prejudice has been further heightened by enemies of the prisoners and friends of the deceased; fourth, that the public mind was unduly and falsely prejudiced against them; fifth, that as a result a public subscription was started to raise funds to employ and pay counsel to assist in the prosecution of the prisoners, and that quite a sum was thus raised and counsel employed. They charge one, August Myers, as aware of the above fact and unfriendly to the defendants.

Continuing, the judge said the allegation regarding the newspapers was sustained by the papers themselves, copies of which were filed by the defense. The circulation of the subscription paper was also proved. These are all the facts that can be admitted as shown. Then the judge proceeds to quote cases sustaining him in declining to grant a new trial on the grounds raised by the defense. Concluding his remarks regarding the desired change of venue, the judge said: The court now sees no reason to believe that there was any error in overruling the prisoners' several motions for a change of venue, made at the calling of the case for trial, and during the empaneling of the jury.

Supporting the verdict of murder in the first degree, the judge said:

It was earnestly urged by the prisoners' counsel, on the argument of the motion for a new trial, that no valid verdict could be found for murder in the first degree, on the indictment against them, though it was in the very form prescribed in section 1, chapter 144, of the code. Counsel urged, with seeming plausibility, that the omission of the word "premeditatedly" from the prescribed form of the code, and followed in this case, made the indictment one for that degree of murder which the law presumes on a killing being shown, viz: Murder in the second degree; and that an indictment for murder in the first degree would have to follow the old common law form, and to allege the offense to have been done "deliberately, wilfully and with malice aforethought," or else follow the exact language of the statute and allege it to have been a "wilful, deliberate and premeditated killing." "Feloniously, wilfully and with malice aforethought" were terms used to characterize and describe the murder set out in the old common law indictment, while in the statutory form of the indictment the words "Feloniously, wilfully, maliciously, deliberately and unlawfully" are used for that purpose. The words feloniously and wilfully are common to both forms of indictment, and are used to express the same meaning in each form. The phrases "malice aforethought" of the old form, is dropped, and the words "maliciously, deliberately and unlawfully" are used in lieu thereof in the new form. The difference, then, between the two forms of indictment is the difference in meaning between the phrases "malice aforethought" and "deliberately, maliciously and unlawfully"; or, the difference between doing an unlawful act with "malice aforethought" and "deliberately and maliciously." Bouvier says "malice aforethought" as used descriptive of murder, means not deliberation or lapse of time, but design and purpose, as contradistinguished from accident or mischance, and that the word malicious, itself, means doing a wrongful act intentionally, without just cause or excuse. Doing an act maliciously means the same as doing it with malice; and doing an act maliciously and deliberately must be to do it with design or purpose, after having deliberated; i. e., weighed the matter with a view to reaching a conclusion. There then can be no difference in meaning between an unlawful act done with malice aforethought and an unlawful act done deliberately and maliciously. In each instance it describes an act done with a wicked purpose, after consideration and reflection.

First Degree Murder.

So far, then, as the phraseology of the old indictment and the statutory indictment are concerned, they are identical in their allegation of intent, and differ only as to the omission in the statutory form of a description of manner and means, in and by which the murder was accomplished.

I am forced to the opinion on reason that the murder, intended by the form of indictment given in the statute, is murder in the first degree, because the very terms employed are aptly descriptive of that degree of homicide, rather than the milder form of homicide. An indictment for murder in the first degree would not be good, for any degree of murder, if the killing was simply at-

Sacrificed to Blood Poison.

Those who have never had Blood Poison can not know what a desperate condition it can produce. This terrible disease which the doctors are totally unable to cure, is communicated from one generation to another, inflicting its taint upon countless innocent ones.

Some years ago I was inoculated with poison by a nurse who infected my babe with blood taint. The little one was unequal to the strain, and his life was yielded up to the fearful poison. For six long years I suffered untold misery. I was covered with sores and ulcers from head to foot, and no form of medicine could express my feelings of woe during those long years. I had the best medical treatment. Several physicians successively treated me, but all to no purpose. The mercury and poisons seemed to add fuel to the fire, and the disease was devouring me. I was advised by friends who had seen wonderful cures made by it, to try Swift's Specific. We got bottles, and I felt hope again revive in my breast—hope for health and happiness again. I improved from the start, and a complete and perfect cure was the result. S. S. S. is the only blood remedy which reaches desperate cases.

Mrs. T. W. Lee,
Montgomery, Ala.

Of the many blood remedies, S. S. S. is the only one which can reach deep-seated, violent ones. It never fails to cure perfectly and permanently the most desperate cases which are beyond the reach of other remedies.

S. S. S. For the Blood

IS PURELY VEGETABLE, and is the only blood remedy guaranteed to contain no mercury, potash or other mineral. Valuable books mailed free by Swift Specific Company, Atlanta, Georgia.

MRS. PINKHAM'S ADVICE.

What Mrs. Nell Hurst has to Say About It.

DEAR MRS. PINKHAM:—When I wrote to you I had not been well for five years; had doctored all the time but got no better. I had womb trouble very bad. My womb pressed backward, causing piles. I was in such misery I could scarcely walk across the floor. Menstruation was irregular and too profuse, was also troubled with leucorrhoea. I had given up all hopes of getting well; everybody thought I had consumption. After taking five bottles of Lydia E. Pinkham's Vegetable Compound, I felt very much better and was able to do nearly all my own work. I continued the use of your medicine, and feel that I owe my recovery to you. I cannot thank you enough for your advice and your wonderful medicine. Any one doubting my statement may write to me and I will gladly answer all inquiries.—Mrs. NELL HURST, Deepwater, Mo.



Letters like the foregoing, constantly being received, contribute not a little to the satisfaction felt by Mrs. Pinkham that her medicine and counsel are assisting women to bear their heavy burdens.

Mrs. Pinkham's address is Lynn, Mass. All suffering women are invited to write to her for advice, which will be given without charge. It is an experienced woman's advice to women.

leged to have been done wilfully, deliberately and premeditatedly. The execution of a man under the sentence of a competent court is a wilful, deliberate and premeditated killing, but it is not a felonious, malicious and unlawful killing, as all murder must be. Judge Holt, in state vs. Hobbs 37th West Virginia, 27, says the words "deliberately" and "premeditatedly" are used in the statute, section one, chapter 144, are synonymous, and "premeditatedly" dispensed with in the form of indictment. Black says deliberation is prolonged meditation. The same definition is given in 74 Missouri, 249. In 28th Iowa, 524, it is held that deliberately is a broader term than premeditatedly. It is easily to be seen that deliberately is a broader term than premeditatedly, and when you have said an act was deliberately done, also, and hence the form of indictment under consideration, by using the word "deliberately," has rendered the word "premeditatedly" unnecessary.

Murder in the second degree (Davis 109) is unknown to common law. It is a grade of murder created by statute, and it is intended to embrace those cases of homicide in which the element of killing maliciously is small or wanting altogether. At common law, the man who threw from the top of a building into a crowded street below without warning, a piece of lumber, and killed a man, was equally guilty of murder with the man who deliberately and intentionally killed another by torture or poison. As stated, murder in the second degree, was designed to embrace those cases of killing, that were the result of passion, rather than a deliberate intention to kill, and the statute creating that degree of murder, in way altered the common law crime of murder, (Davis 110), and didn't divide that crime into two distinct offenses; but to graduate the punishment of each case of murder according to its atrocity, distinguished the crime into two degrees.

Form of Indictment Good.

Now, having ascertained the purport of the language used in the form of indictment for murder, prescribed in the statute, and that it is identical in meaning with the language used in the old common law indictment for that crime, and further understanding that the statute did not alter the crime of murder and did not divide it into two distinct offenses, it is easy to acquiesce in the conclusion reached by our supreme court, viz: that the form of indictment prescribed in section 1, chapter 144, of the code, is a good indictment for murder and one on which a verdict for murder in the first degree may be rendered, and that the omission of the word "premeditatedly" from that form, does not vitiate it. This has been the holding of the court in all cases where the indictment for murder has been questioned and discussed. State vs. Douglas, 41st West Virginia, 537; state vs. Hobbs, 37th West Virginia, 535; state vs. Baker, 32d West Virginia, 320; state vs. Flannigan, 26th West Virginia, 116; state vs. Schnelle, 24th West Virginia, 767; state vs. Smith, 24th West Virginia, 815.

Proceeding, Judge Huges took up the technical objections made by the defense to the instructions to the jury as given at the instance of the state, and concluded that they did not justify a new trial.

Perhaps the most interesting matter brought out, was that relating to the alleged improper remarks made by Mr. John A. Howard in his speech before the jury on behalf of the state. On this Judge Huges said:

On the question of the propriety or impropriety of parts of the closing argument made for the state, a very troublesome question is presented. The subject matter of the question is not only perplexing in its nature, but the manner of its presentation is likewise troublesome. It has been the holding of the courts regulating the practice of this made at the very time of the utterance of the objectionable statement in argument accompanied with a motion to exclude it, and direct the jury to disregard it. If made then, court, jury and counsel know exactly what the remark is and what is ruled, and directed by the court on the objection; and if not made at the time of the utterance, it has been the prevailing holding of the courts, that the matter was waived. In this case, the motion made at the close of the argument was to direct the jury to disregard all arguments which had no evidence to warrant them, without specifying what the arguments were that were believed to be unauthorized and beyond the evidence.

The Argument Stands.

On this general motion the court did instruct the jury to disregard certain statements, indicating them, and then generally to disregard "all observations that were not based on evidence, or were not proper replies to the arguments of opposing counsel." To this action and ruling of the court there was no further exception or objection, and it would seem that, according to the usual practice, there is then no objection or question open now to be considered concerning the argument, and that the argument, as it now stands, stands without objection or exception. Objections or exceptions to the argument, noted privately at the request of counsel to the stenographer and not called to the attention of the court, cannot be considered as exceptions to the court's ruling. In cases of minor criminality, the court would deem its rulings as thus indicated, as conclusive, and entirely sufficient to accomplish the ends of justice; but, this is a grave and serious case, and the court would not adhere to the approved holdings of practice, if any injury would thereby result. Remarks and arguments of counsel

have been discussed in our own state, in the cases of state vs. Allen, 20th South East, 213; state vs. Shaw, 40th West Virginia, 1; state vs. Shores, 21st, 500; and, incidentally, though not pertinent to the case, in the decisions by the supreme court. From the cases mentioned, the following general propositions have been selected:

First—That counsel must necessarily have great latitude in the argument of a case.

Second—Appellate courts will not interfere, unless it clearly appears from the record that the rights of the prisoner were prejudiced by such line of argument.

Third—That the trial court, on objection and motion, may direct the jury to disregard an argument, and exclude it from the consideration, and that thereby the effect of the improper argument may be neutralized.

In the state vs. Shaw it is said, improper remarks of counsel, should not cause a verdict, plainly right, and in which any other verdict would be manifestly wrong, to be set aside. And, in the same case, on the question of first degree murder the court says "It is difficult to limit the consideration which shall govern the jury. If deducible from the nature of the crime, and its perpetrator, as manifested by the evidence, Latitude Allowed.

Under the latitude thus said to be allowed counsel, it is permissible to refer to any and all facts and statements of witnesses who testified, and draw inferences therefrom. If that is so, then was it error of counsel to say: "What do they ask of you? They ask the years that remain of that vicious life of theirs; they ask a verdict that will permit them to go back to the brothel; their eye is on the red light that shines in the night, and lures them instead of warning them of danger. Their desire is to go back to that kind of vicious association."

I select these words from the argument, as probably the harshest expressions to be found in it, and as statements to which the court did not call the special attention of the jury, with directions to the jury to disregard them, and as words which prisoners' counsel did not specifically point out, and ask to be excluded. If these words had been used and uttered in disparagement of prisoners' credibility, there could be no impropriety in such use. The red light and brothel, the jail and penitentiary servitude and lives more or less vicious, are all entitled to some weight on the question of prisoners' veracity as witnesses. May not these words, also, be used as a reminder to the jury that sympathy and sentiment would be misplaced, if extended to the prisoners, in view of the lives they had led, as disclosed by the evidence, and that the jury should not, therefore, yield to them anything on account of sympathy for themselves, parents and sisters.

It is to this end, and on this point, probably, that the speaker intended to have them bear, and they were not relevant for that purpose. Again, these words have a tendency to call the jury's attention to the fact that coming as the prisoners did, directly from the brothel to the commission of the crime, the prisoners might be easily presumed to harbor in their hearts that atrocious malice, which, if harbored, by the slaying of his fellow man, can only be expiated by giving up the slayer's life. Good character, affirmatively shown, may raise a reasonable doubt, itself, of guilt. If this good character is not shown, and the good character presumed by the law is destroyed by evidence of a bad or doubtful character, a felonious act by the possessor of such disparaged character may well be presumed the more readily and naturally to spring from malice, and from "a heart regardless of social duty, and fatally bent on mischief."

The Facts Were Strong.

On the question, then, of credibility, sentiment and sympathy, and malice, the sentences quoted cannot be said to be irrelevant, and unsuggested by the evidence and the circumstances of the case.

Under the license of large latitude, allowed counsel, in argument, I cannot say that any of the other remarks are so irrelevant, but that latitude as to be plainly prejudicial.

Comparisons are odious, and I do not, therefore, attempt to compare the language complained of here with that of other cases. Suffice it to say: the facts and circumstances of this case were strong, and almost always to the disadvantage of the prisoners, and they gave counsel for the state opportunities to draw and suggest many inferences to their detriment.

Although no questions of evidence were discussed on the argument of the motion for a new trial, I have, nevertheless, gone over the evidence in great part. It seems to me to be singularly free from error.

In considering the points raised on this motion for a new trial, I have endeavored to do so under a sense of reverence as profound as though there was no appeal from my decision thereon; and while I overrule the motion for a new trial, my sorrow for so doing is somewhat consoled by knowing that the matter will not be permitted to rest here, but will be taken for review, if necessary, to all appellate courts. Such review I will aid and facilitate all I can, believing that human life should not be taken, unless the judgment and sentence of the trial court is approved and confirmed by all appellate courts. Human life is a precious thing, and an awful responsibility rests on those whose duty it is by law to render the judgment that it forfeits it.

The Prisoners Sentenced.

In sentencing the prisoners to hang, Judge Huges spoke in a husky voice, especially toward the close. He said:

I am sorry, indeed, that the innocence you insisted upon before the jury, was not established by the evidence to the satisfaction of the jury that tried you. That jury, selected solely to ascertain the facts in this case, found on the evidence a verdict of guilty. That jury was, I think, an entirely fair and impartial jury, composed of sensible and conservative men, actuated in the discharge of its duty by no motive other than the single, simple one of doing right under the evidence. The evidence to sustain its finding is so ample for the purpose, that this court dare not, on the ground of want of evidence, interfere with or criticize its verdict. It must stand with all of its terrible import to you prisoners, and your statements now, which may mitigate its fearful consequences or reverse the court from pronouncing the sentence the law enjoins as a consequence of its finding.

You and your friends doubtless think that the encounters between you and the deceased and his friends, the day prior to the day of the fatal shot, palliate your guilt. In the light of the evidence and the law, such view is not warranted, however.

The evidence of the second affray shows it to have been a bold, impudent attack on you prisoners, but not one intended or designed for anything more than the infliction of a good beating on you.

I can well imagine how you chafed, not only under the punishment inflicted, but also under the reflection that your accounts took from you and bore away in triumph, as a trophy of the battle, your knife, of which they deprived you with such violence, and which they exhibited so soon after capture, with exultant pride and bravado, no doubt.

The Police Criticized.

It is a pity, and a matter, no doubt, sincerely regretted since, by the police, who had early information of these troubles, that arrests were not promptly made. Neglect to make arrests seems to look like a license and leave to the participants an even matters up in such a way and time as they might chance upon.

Left thus, apparently, to seek your own vindication, the evidence that discloses your actions the day subsequent

to the last affray, seems, all too vividly, to portray a purpose to follow up the deceased and his friends, and seek a revenge that the law does not tolerate, excuse or pardon a lot of other things. The result to you prisoners, as it comes to you in this extreme of verdicts, is overwhelmingly terrible. Your lives are demanded by the law, to atone for the crime committed, and as warnings to others not to be guilty of like crimes.

It may be that the appellate courts, to which I will contribute all I can to have this case taken, will award you a new trial. Human life is precious thing, and should not be taken unless all the steps and acts taken in a trial are taken according to law and right, and approved by all courts. And, as stated, the higher courts may find good grounds to grant you a new trial. I would not, however, put too much trust in this hope.

Although death may not come to you under sentence of the court, at a given time, it is sure to come to you as to all of us, at some time, and a preparation for it should always be made. You should earnestly seek the salvation of your souls. Counsel with those good men and women who may visit you. Put away all worldly and sinful thoughts, and seek forgiveness, and may God have mercy on your souls.

It is the judgment of the court that you be hanged by the neck until dead, and that the sheriff of this county execute this sentence upon you, by hanging you in the jail of Ohio county, on Friday, the 15th day of June, 1899, between the hours of 10 o'clock a. m. and 4 o'clock p. m., of that day.

EAGAN'S SUSPENSION

Develops an Interesting Fact—Still Remains Commissionary General.

WASHINGTON, D. C., Feb. 8.—An interesting fact in connection with General Eagan's suspension from the army was developed to-day on inquiry at the war department. Although General Eagan has been suspended without rank or duty, he still remains commissary general of the army, drawing the pay of that office and there is no way in which he can be displaced until he is retired. In this the army differs from the navy. In that branch of the service such staff appointments are made for a term of four years, at the end of which time the incumbent may be changed or reappointed. In the army the appointment is for the remaining term of service.

This was decided, in the case of Judge Advocate General Swain, a number of years ago. Though suspended from the army for twelve years, he continued to be the judge advocate general, although his duties were performed by the acting judge advocate general, Lieber, the present incumbent of the office, and this state of things continued for nine years, during all of which time General Swain continued to draw full pay while his deputy drew only the pay corresponding to the lower rank. General Eagan is still in Washington and the acting commissary general, Col. John Weston, is sick in New York, never yet having been able to assume his place in the department at Washington.

Held by Rheumatism.

WASHINGTON, Feb. 8.—Sixto Lopez, Agonillo's secretary, and Dr. Lazada, his associate, the two remaining members of the Filipino junta in this country, will not be able to get out of town for some days. Lazada's inflammatory rheumatism is still acute and he is suffering too much pain to leave his bed.

At the same time it is asserted positively that the administration will ignore their presence here provided they commit no objectionable act, and a member of the cabinet stated to-night that no point was likely to be raised by this government against the junta's staying in Canada. Lopez remained very quietly at his hotel apartments here to-day, denying himself to all callers.

Great Loss of Cattle.

DENVER, Feb. 8.—J. W. Springer, secretary of the Continental Land and Cattle company, to-day received word from its Montana and Texas ranches that the loss of live stock would be very heavy as a result of the long and general storm and cold. "The loss," said Mr. Springer, "will be general throughout the western country, from Montana down through Wyoming, Colorado, New Mexico, and Texas. In some places it will undoubtedly reach 50 per cent., and it will probably run through the country from 10 to 15 per cent. The general loss of cattle is bound to make high prices during the year, as the government reports show that there is a cattle shortage, and the demand for foreign trade is greatly increased."

Methodist Book Committee.

NEW YORK, Feb. 8.—The book committee of the Methodist Episcopal church met to-day. This committee has charge of all the publishing interests of the church. The Rev. Dr. W. F. Whitlock, of Delaware, Ohio, presided, with the Rev. S. O. Benton, of Rhode Island, as secretary. Nearly all of the twenty members were present, as were the editors of nearly a dozen religious newspapers, which are owned by the church. There were also present a number of editors of other Methodist papers. The sessions probably will continue three days.

The Virginians Victims.

WASHINGTON, D. C., Feb. 8.—Senator Money to-day introduced a bill to enable the secretary of war to have the remains of the captain and crew of the Virginian, who were executed in Cuba in 1873, exhumed and returned to the United States. There were thirty-six members of the crew and sixteen other citizens of the United States executed at the same time, but the bill provides that if their graves cannot be identified, the place of interment shall be enclosed and marked.

A Thousand Tongues

Could not express the rapture of Annie E. Springer, of 1125 Howard st., Philadelphia, Pa., when she found that Dr. King's New Discovery for Consumption had completely cured her of a hacking cough that for many years had made life a burden. All other remedies and doctors could give her no help, but she says of this Royal Cure: "It soon moved the pain in my chest and I can now sleep soundly, something I can scarcely remember doing before. I feel like sounding its praises throughout the universe." So will everyone who tries Dr. King's New Discovery for any trouble of the throat, chest or lungs. Price 50c and \$1.00. Trial bottles free at Logan Drug Co.'s drug store; every bottle guaranteed.

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For information call or write to PROF. BIRKHOFF, 527 Race Street, bet. Fifth & Sixth Streets, (Room 10), Cincinnati, Ohio. For Sale by C. R. GOETZE, Druggist.

Gold Dust. | Gold Dust

Grimy finger marks seem to grow on the woodwork about the house. They come easily and they stick, too—unless you get rid of them with

GOLD DUST Washing Powder

It makes all cleaning easy.

THE N. K. FAIRBANK COMPANY,
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Recipe of Old Dr. J. C. PITCHER

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Syrup of Marshmallows—
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Syrup of Gum Myrror—
Syrup of Gum Resin—
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Syrup of Gum Coriander—
Syrup of Gum Cumin—
Syrup of Gum Mustard—
Syrup of Gum Horseradish—
Syrup of Gum Ginger—
Syrup of Gum Turmeric—
Syrup of Gum Saffron—
Syrup of Gum Annatto—
Syrup of Gum Mastic—
Syrup of Gum Benzoin—
Syrup of Gum Myrror—
Syrup of Gum Resin—
Syrup of Gum Sassafras—
Syrup of Gum Turpentine—
Syrup of Gum Clove—
Syrup of Gum Nutmeg—
Syrup of Gum Peppercorn—
Syrup of Gum Allspice—
Syrup of Gum Anise—
Syrup of Gum Licorice—
Syrup of Gum Elder—
Syrup of Gum Juniper—
Syrup of Gum Rosemary—
Syrup of Gum Thyme—
Syrup of Gum Lavender—
Syrup of Gum Sage—
Syrup of Gum Basil—
Syrup of Gum Oregano—
Syrup of Gum Marjoram—
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